BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Consider the Adoption of a General Order and Procedures to Implement the Digital Infrastructure and Video Competition Act of 2006.	Rulemaking 06-10-005 (Filed October 25, 2006)

APPLICATION FOR REHEARING OF DECISION 07-03-014 OF THE GREENLINING INSTITUTE

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April 4, 2007

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Consider the Adoption of a General Order and Procedures to Implement the Digital Infrastructure and Video Competition Act of 2006.	Rulemaking 06-10-005 (Filed October 25, 2006)

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I. INTRODUCTION

Pursuant to Commission's Rules of Practice and Procedure Rule 16.1, the Greenlining Institute ("Greenlining") respectfully submits the following Application for Rehearing of Decision 07-03-014 ("D.0703-014"). This Application for Rehearing is being filed within 60 days of the date the Commission mailed D. 07-03-044 and is therefore, timely.

Throughout this proceeding Greenlining has provided the California Public Utilities Commission ("CPUC" or "Commission") with substantial comments on the interpretation and implementation of the Digital Infrastructure and Video Competition Act of 2006 ("DIVCA"). In this Application for Rehearing Greenlining addresses two specific errors of D.07-03-014.

First, Greenlining submits that D.07-03-014 incorrectly denied interested parties the opportunity to participate in the franchise application process. Second, Greenlining submits that D.07-03-014 incorrectly determined that the Commission lacked the statutory authority to grant intervenor compensation within the video context.

II. THE DECISION'S DENIAL OF PUBLIC PROTEST IN THE FRANCHISE APPLICATION PROCESS IS INCONSISTENT WITH COMMISSION PRECEDENT AND DIVCA

Greenlining believes the Legislature's decision to reverse itself and grant the CPUC with the authority to implement DIVCA, rather than the California Department of Corporations ("CDC") was a knowing and meaningful act. Furthermore, Greenlining believes that the Legislature specifically chose the CPUC, because it knew only the CPUC would uphold DIVCA's *explicit* objectives for reformation of the video franchising process by providing aggressive consumer protections to all communities in California.[1] Greenlining finds it hard to believe that the rubber stamping of video franchise applications, combined with little or no information and the absence of public protests, was hardly what the Legislature envisioned in giving to its most respected state agency authority the authority and charge to not only to create competition, but ensure that the underserved are effectively served.

With the Legislature's implicit understanding of the nature of the CPUC, including its mechanism for public protest and effective intervenor compensation system[2], Greenlining advocated for the CPUC's jurisdiction of video franchises. Greenlining did not advocate for the CPUC's jurisdiction so that interested parties, in particular those ensuring that DIVCA's mandates were upheld, would be later denied the ability to participate in the video application franchise process. By forbidding protests and the opportunity for intervenor compensation,

[1] *See* § 5810)a)(2)(G), a principle behind the legislation is to maintain all existing authority of the California Public Utilties Commission as established through state and federal statutes.

[2] The legislature recognized that the CPUC's intervenor compensation system is consistent with state law and the California Supreme court's Serrano v. Priest decisions on fees for public interest legal work.

Greenlining believes D.07-03-014 has not only departed from the implicit and explicit intentions of the Legislature, but from Commission rules and precedent.[3]

Contrary to the Commission's characterization of its limited discretion to review state video franchise application and that protest are no more than an "idle act" that would accomplish nothing, Greenlining believes that public protest is essential to ensure that the needs of underserved communities in California are fully protected.[4] Greenlining rejects the interpretation that DIVCA constrains the Commission from allowing public protest due to the timetable for review and approval of applications. While the Commission relies on the lack of specific legislative authorization as a justification for its denial of public protest during the application process, Greenlining asserts that it is the very absence of specific legislation *disallowing* public protest that it (public protest) must be an essential part of the application process. Furthermore, as the Utility Reform Network ("TURN") noted in its application for rehearing of D.07-03-014, DIVCA does not suggest any interest in eliminating vehicles for public input into the application review and approval process.[5] In fact, the Legislature's provision that the authority of the California Public Utilties Commission should be maintained supports Greenlining and TURN's positions.[6] Greenlining therefore asserts that under Commission precedent, D.07-03-014 incorrectly denies public protest of franchise applications.

It is through intervenor compensation and the right to protest that issues such as access, discrimination, and consumer protection are brought to the forefront of policy deliberations and to the Commission. In order to properly enforce the rules and mandates of the legislation,

[3] *See* Application of The Utility Reform Network for Rehearing of Decision 07-03-014, p.11

[4] D.07-03-014, p.93

[5] *See* Application of The Utility Reform Network for Rehearing of Decision 07-03-014, p.12

[6] *See* §5810(a)(2)(G)

intervenor compensation and the right to public protests must be maintained in proceedings related to video franchises. Within a discretionary role, which the Commission has been granted by the legislation, it is imperative that all information pertinent to determining a provider's qualifications for a statewide franchise be made available. Without the ability for individuals or groups to protest within a given time period, the process for awarding video franchises is flawed and lacks the substantial information necessary to guarantee that it meets the objectives of the legislation.

As set forth in its previously filed comments Greenlining believes that only through a public process that allows for full participation can the Commission ensure that the objectives of the Legislature and DIVCA are met.[7] It is through the right to protest that issues such as access, discrimination and consumer protection are brought to the forefront of policy deliberations and before the Commission. Without the ability for individuals or groups to protest the applications within a given time period, the process for awarding video franchises allows for flaws that undermine the goals of DIVCA.

III. THE DECISION INCORRECTLY DETERMINED THAT THE COMMISSION LACKED THE AUTHORITY TO GRANT INTERVENOR COMPENSATION IN

The Commission's intervenor compensation system acts as a mechanism to ensure that all interested parties are allowed the forum to participate fully and equally in proceedings. As related to video franchise applications, Greenlining believes the need for intervenor compensation is even more crucial than in any other CPCU proceeding, not only because regulation of cable and video services is a new area for the Commission, but the specific goal of the legislature to promote the widespread access to the most technologically advanced cable and video services to all California communities in a

[7] For example, *see* §5810(2)(B), "Promote the widespread access to the most technologically advanced cable and video services to all California communities in a nondiscriminatory manner regardless of socioeconomic status."

nondiscriminatory manner regardless of socioeconomic status and complement efforts to increase investment in broadband infrastructure and close the digital divide.[8]

Greenlining rejects D.07-03-014 determination that intervenor compensation is inapplicable in this proceeding. Greenlining asserts that the intervenor compensation statutes clearly define the Commission's course of conduct and provides that the Commission shall award intervenor compensation in any proceeding where a party has met the statutory qualifications.[9] Furthermore, as discussed i*nfra* Greenlining asserts that it is the very absence of specific legislation disallowing intervenor compensation reflects the Legislature's intention to uphold the CPUC's processes and allow compensation to parties who meet the statutory requirements.

As written, D.07-03-014 has essentially stopped all interested parties involvement in all video franchise applications and DIVCA-related proceedings. This is inconsistent with Commission precedent, California law and DIVCA.

IV. CONCLUSION

For the reasons stated above, the Greenlining Institute requests its application for rehearing is granted.

[8] *See* § 5810

[9] *See* § 1801

Dated: April 4, 2007

Respectfully submitted,

/s/ Robert Gnaizda
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/s/ Thalia N. C. Gonzalez
Thalia N.C. Gonzalez
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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Consider the Adoption of a General Order and Procedures to Implement the Digital Infrastructure and Video Competition Act of 2006.	Rulemaking (Filed February 12, 2007)

CERTIFICATE OF SERVICE

I, Thalia N.C. Gonzalez, am 18 years of age or older and a non-party to the within proceeding. I am a resident and citizen of the State of California with the business address at the Greenlining Institute of 1918 University Avenue, Second Floor, Berkeley, CA 94704 and telephone number of 510-926-4002.

On April 4, 2007, I caused the following document:

APPLICATION FOR REHEARING OF DECISION 07-03-014 OF THE GREENLINING INSTITUTE

to be served upon all interested parties of record in D.07-03-014 named in the official service list via e-mail to those whose e-mail address is listed in the official service list and via first class mail with postage prepaid or facsimile to those whose e-mail address is not available.

I certify that the foregoing is true and correct.

Executed in Berkeley, California on April 4, 2007.

/s/ Thalia N.C. Gonzalez
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